

2007 BILL

1 ~~AN ACT to renumber 939.617 (3); to renumber and amend 939.617 (1) and~~
2 ~~939.617 (2); to amend 301.48 (1) (e) 1.; to repeal and recreate 948.02 (1),~~
3 ~~948.025 (1) and 948.025 (2); and to create 301.48 (1) (e) 2. d. and 939.616 (1g)~~
4 ~~of the statutes; relating to: reconciling 2005 Wisconsin Acts 430, 431, and 437;~~
5 ~~mandatory terms of confinement for certain child sex offenses, sexual assault~~
6 ~~of a child, global positioning system tracking for certain sex offenders, and~~
7 ~~providing penalties.~~

Analysis by the Legislative Reference Bureau

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B
This bill reconciles 2005 Wisconsin Acts 430, 431, and 437. In 2005 Wisconsin Acts 430 and 437, sections 948.02 (1) (first-degree sexual assault of a child) and 948.025 (repeated acts of sexual assault of the same child) were renumbered and amended in ways that were not compatible. This bill repeals and recreates these statutes to accommodate the renumbering and to include all of the substantive provisions but intends no substantive change with the repeal and recreate.

In addition, 2005 Wisconsin Act 437 created a Class A felony for first-degree sexual assault and repeated acts of sexual assault of the same child, which includes both sexual intercourse and sexual contact, that results in great bodily harm to the victim (Class A felony). But the 25-year mandatory minimum incarceration provisions and the global positioning system (GPS) tracking provisions created in

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1 Insert 3-12

2 **(2) WHO IS COVERED.** (a) A person who is subject to the global positioning system
3 tracking requirement under s. 301.48 (2) or (2m) is subject to the vehicle registration
4 plate requirement and prohibition under sub. (3) until the person is released from
5 the global positioning system tracking requirement under s. 301.48 (2) or (2m), until
6 his or her death, or until otherwise terminated under sub. (6) or (7).

7 (b) If a person is required to be registered as a sex offender under s. 301.45 due
8 to a commission of a serious child sex offense and par. (a) does not apply, he or she
9 is subject to the vehicle registration plate requirement and prohibition under sub.
10 (3) until he or she is no longer required to register as a sex offender under s. 301.45,
11 until his or her death, or until otherwise terminated under sub. (6) or (7).

12 (c) If a person is on supervised release under s. 980.08 (6m) and par. (a) does
13 not apply, he or she is subject to the vehicle registration plate requirement and
14 prohibition under sub. (3) until his or her death or until otherwise terminated under
15 sub. (7).

16 (d) If a person is on parole, or has been discharged, under ch. 975, by the
17 department of health and family services following a commitment that was based on
18 his or her commission of a serious child sex offense and par. (a) does not apply, he or
19 she is subject to the vehicle registration plate requirement and prohibition under
20 sub. (3) until his or her death or until otherwise terminated under sub. (7).

21
22 Insert 8-7

23 **(5) NOTIFICATION.** (a) The department shall notify a person under sub. (2) (a),
24 (b), (e), or (f) of his or her need to comply with the vehicle registration plate
25 requirement and prohibition under sub. (3).

1 (b) If the person is not already required to be notified under par. (a), the
2 department of health and family services shall notify the person under sub. (2) (c)
3 or (d) of his or her need to comply with the vehicle registration plate requirement and
4 prohibition under sub. (3).

5 (c) After notifying a person under par. (a) or (b) of the need to comply with this
6 section, the person who is providing the notification shall require the person who is
7 being notified to read and sign a form stating that he or she has been informed of the
8 requirements of this section.

9 (d) It is not a defense to liability under sub. (4) (a) or (b) that the person subject
10 to sub. (3) was not required to read and sign a form under par. (c), was not provided
11 with a form to read and sign under par. (c), or failed or refused to read or sign a form
12 under par. (c). It is not a defense to liability under sub. (4) (a) or (b) that the person
13 subject to sub. (3) did not receive notice under this subsection from the department
14 of health and family services or the department of corrections.

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end of INS
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2005 Wisconsin Acts 430 and 431, respectively, do not currently apply to the Class A felony. This bill applies the 25-year mandatory minimum incarceration requirement and the GPS tracking requirement to the Class A felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INS
2-1

1 **SECTION 1.** 301.48 (1) (e) 1. of the statutes, as created by 2005 Wisconsin Act
2 431, is amended to read:

3 301.48 **(1)** (e) 1. Section 948.02 (1) (am), (b), (c), or (d) or 948.025 (1) (a), (b), or
4 ~~(ag)~~ (c).

5 **SECTION 2.** 301.48 (1) (e) 2. d. of the statutes is created to read:

6 301.48 **(1)** (e) 2. d. The actor has sexual contact or sexual intercourse with a
7 person who has not attained the age of 13 years and the sexual contact or sexual
8 intercourse results in great bodily harm, as defined in s. 939.22 (14), to the person.

9 **SECTION 3.** 939.616 (1g) of the statutes is created to read:

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10 939.616 **(1g)** If a person is convicted of a violation of s. 948.02 (1) (am) or
11 948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make
12 an extended supervision eligibility date determination on a date that will occur
13 before the person has served a 25-year term of confinement in prison.

14 **SECTION 4.** 939.617 (1) of the statutes, as created by 2005 Wisconsin Act 430,
15 is renumbered 939.616 (1r) and amended to read:

16 939.616 **(1r)** If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or
17 948.025 (1) ~~(a)~~ (b), the court shall impose a bifurcated sentence under s. 973.01. The

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1 term of confinement in prison portion of the bifurcated sentence shall be at least 25
2 years. Otherwise the penalties for the crime apply, subject to any applicable penalty
3 enhancement.

4 **SECTION 5.** 939.617 (2) of the statutes, as created by 2005 Wisconsin Act 430,
5 is renumbered 939.616 (2) and amended to read:

6 939.616 (2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025
7 (1) ~~(ag)~~ (c), the court shall impose a bifurcated sentence under s. 973.01. The term
8 of confinement in prison portion of the bifurcated sentence shall be at least 5 years.
9 Otherwise the penalties for the crime apply, subject to any applicable penalty
10 enhancement.

11 **SECTION 6.** 939.617 (3) of the statutes, as created by 2005 Wisconsin Act 430,
12 is renumbered 939.616 (3).

13 **SECTION 7.** 948.02 (1) of the statutes is repealed and recreated to read:

14 948.02 (1) **FIRST DEGREE SEXUAL ASSAULT.** (a) In this subsection, "sexual
15 intercourse" means vulvar penetration as well as cunnilingus, fellatio, or anal
16 intercourse between persons or any intrusion of any inanimate object into the genital
17 or anal opening either by the defendant or upon the defendant's instruction. The
18 emission of semen is not required.

19 (am) Whoever has sexual contact or sexual intercourse with a person who has
20 not attained the age of 13 years is guilty of a Class A felony if the sexual contact or
21 sexual intercourse results in great bodily harm to the person.

22 (b) Whoever has sexual intercourse with a person who has not attained the age
23 of 12 years is guilty of a Class B felony.

24 (c) Whoever has sexual intercourse with a person who has not attained the age
25 of 16 years by use or threat of force or violence is guilty of a Class B felony.

BILL**SECTION 7**

1 (d) Whoever has sexual contact with a person who has not attained the age of
2 16 years by use or threat of force or violence is guilty of a Class B felony if the actor
3 is at least 18 years of age when the sexual contact occurs.

4 (e) Whoever has sexual contact with a person who has not attained the age of
5 13 years is guilty of a Class B felony.

6 **SECTION 8.** 948.025 (1) of the statutes is repealed and recreated to read:

7 948.025 (1) (a) A Class A felony if at least 3 of the violations were violations of
8 s. 948.02 (1) (am).

9 (b) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
10 (am), (b), or (c) but fewer than 3 of the violations were violations of s. 948.02 (1) (am).

11 (c) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
12 (am), (b), (c), or (d) but fewer than 3 of the violations were violations of s. 948.02 (1)
13 (am), (b), or (c).

14 (d) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
15 (am), (b), (c), (d), or (e) but fewer than 3 of the violations were violations of s. 948.02
16 (am), (b), (c), or (d).

17 **SECTION 9.** 948.025 (2) of the statutes is repealed and recreated to read:

18 948.025 (2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find
19 the defendant guilty the members of the jury must unanimously agree that at least
20 3 violations of s. 948.02 (1) (am) occurred within the specified period of time but need
21 not agree on which acts constitute the requisite number.

22 (b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant
23 guilty the members of the jury must unanimously agree that at least 3 violations of
24 s. 948.02 (1) (am), (b), or (c) occurred within the specified period of time but need not

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1 agree on which acts constitute the requisite number and need not agree on whether
2 a particular violation was a violation of s. 948.02 (1) (am), (b), or (c).

3 (c) If an action under sub. (1) (c) is tried to a jury, in order to find the defendant
4 guilty the members of the jury must unanimously agree that at least 3 violations of
5 s. 948.02 (1) (am), (b), (c), or (d) occurred within the specified period of time but need
6 not agree on which acts constitute the requisite number and need not agree on
7 whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), or (d).

8 (d) If an action under sub. (1) (d) is tried to a jury, in order to find the defendant
9 guilty the members of the jury must unanimously agree that at least 3 violations of
10 s. 948.02 (1) (am), (b), (c), (d), or (e) occurred within the specified period of time but
11 need not agree on which acts constitute the requisite number and need not agree on
12 whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), (d), or (e).

13 **SECTION 10. Effective dates.** This act takes effect on the day after publication,
14 except as follows:

15 (1) The treatment of section 301.48 (1) (e) 1. and 2. d. of the statutes takes effect
16 on July 1, 2007. ✓

17 (END)

section
(*) The treatment of section 301.49 of the statutes
takes effect on the first day of the 6th month
beginning after publication.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0702/?dn

.....

CMH:lm/c :

✓
Jonna:

Please review the effective date provision. ✓ I made the act effective on the first day of the sixth month beginning after publication to give DOT time to create the license plates and the persons subject to the license plate requirement and prohibition time to acquire them. ✓ Is that timeframe okay? ✓

This bill has a retroactive application. It applies to all persons registered as sex offenders if a serious child sex offense is the basis for the registration requirement and to all persons on supervised release. ✓ This is different than the GPS tracking requirement in s. 301.48, which, except for persons covered under s. 301.48 (2) (c), the event that triggers the GPS requirement has to occur on or after July 1, 2007. ✓ I am noting this only because I want to make sure that ~~I understand that~~ this is what you intend. The retroactive application may increase the fiscal estimate since the requirement will apply to more people and DOC and DHFS will have to notify more people. ✓

them it is ~~OK~~ ✓ Note that I reconciled Acts 430, 431, and 437 in this bill. I did this to clarify definitions and cross-references. ✓ Otherwise the bill would be a great deal longer and more confusing right now; also, once those bills were reconciled ~~that~~ language would be superfluous. ✓ OK? If those acts are reconciled before you introduce this bill, then I can redraft the bill to eliminate the reconciliation provisions. ✓ If ~~the~~ bill is already introduced, the reconciliation provisions will not have any effect. ✓ ~~this~~ ~~the~~ incorporating the current statutes

Please review the penalty provisions. ✓ You asked for a maximum imprisonment sentence of 10 years. ✓ So I made the violations Class G and Class H felonies. Please be aware that these are bifurcated sentences so that the 10 year maximum includes a term of confinement and a term of extended supervision. ✓

I made this draft a preliminary draft because I anticipate that you may want changes. ✓ It will have to be redrafted before it can be introduced. ✓

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RMR

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ReGen

1 AN ACT *to renumber* 939.617 (3); *to renumber and amend* 939.617 (1) and
2 939.617 (2); *to amend* 301.48 (1) (e) 1., 341.16 (1) (a) and 341.16 (4); *to repeal*
3 *and recreate* 948.02 (1), 948.025 (1) and 948.025 (2); and *to create* 301.48 (1)
4 (e) 2. d., 301.49, 341.14 (6y), 341.16 (1) (c) and 939.616 (1g) of the statutes;
5 **relating to:** vehicle registration plates for certain sex offenders, reconciling
6 2005 Wisconsin Acts 430, 431, and 437, and providing penalties.

on a highway

Analysis by the Legislative Reference Bureau

a This bill requires certain sex offenders to replace the license plates on all vehicles that they own with special chartreuse-colored license plates. A person who intentionally violates this requirement is guilty of a Class G felony and may be fined up to \$25,000 or sentenced to a term of imprisonment of up to ten years (which, as with other felonies, includes a term of confinement and a term of extended supervision if the sentence is for more than one year) or both. The bill also prohibits those persons from operating any motor vehicle unless it bears chartreuse-colored license plates. A person who intentionally violates this prohibition is guilty of a Class H felony and may be fined up to \$10,000 or sentenced to a term of imprisonment of up to six years or both.

In general, the special license plate provisions apply to four groups of sex offenders: 1) sex offenders being tracked, after July 1, 2007, by a global positioning system (GPS) tracking device, which includes persons who engaged in sexual

displays

convicted of engaging

(24)
were convicted of engaging

intercourse with a person who was under 12 years old, persons who engaged in sexual intercourse with a person who was under 16 years old by use or threat of force or violence, persons over the age of 18 who engaged in sexual contact with a person who was under 16 years old by use of threat of force or violence, and, at the discretion of the Department of Corrections (DOC), persons on probation, extended supervision, or parole for committing a sex offense as a condition of their release; 2) any registered sex offender if his or her registration requirement is based on a serious child sex offense, as defined in the bill; 3) persons placed on supervised release; and 4) persons who committed any other type of sex offense that triggers the sex offender registration requirements if DOC requires the provisions to apply.

Persons in the first group and second group are subject to the special license plate provisions established in the bill as long as they are subject to the GPS tracking requirement or the requirement to register as a sex offender unless a court grants a petition to terminate the requirement for the special license plate provisions. The court may grant a petition if: 1) the person has not been convicted of a crime that was committed while the person was subject to the special license plate provisions; 2) the person has been subject to the special license plate provisions for at least 20 years; and 3) the court determines that applying the special license plate provisions to the person is no longer necessary to protect the public. If a person's petition is denied, he or she may not file a subsequent petition for five years. In addition, the court may grant a petition filed by DOC with respect to a person in the first, second, or third group if: 1) the petition alleges that the person is permanently physically incapacitated; 2) it includes affidavits from two physicians that explain the nature of the person's permanent physical incapacitation; and 3) the court determines that the person is permanently physically incapacitated so that he or she is not a danger to the public.

This bill reconciles 2005 Wisconsin Acts 430, 431, and 437. In 2005 Wisconsin Acts 430 and 437, sections 948.02 (1) (first-degree sexual assault of a child) and 948.025 (repeated acts of sexual assault of the same child) were renumbered and amended in ways that were not compatible. This bill repeals and recreates these statutes to accommodate the renumbering and to include all of the substantive provisions but intends no substantive change with the repeal and recreate.

In addition, 2005 Wisconsin Act 437 created a Class A felony for first-degree sexual assault and repeated acts of sexual assault of the same child, which includes both sexual intercourse and sexual contact, that results in great bodily harm to the victim (Class A felony). But the 25-year mandatory minimum incarceration provisions and the global positioning system (GPS) tracking provisions created in 2005 Wisconsin Acts 430 and 431, respectively, do not currently apply to the Class A felony. This bill applies the 25-year mandatory minimum incarceration requirement and the GPS tracking requirement to the Class A felony.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

*1 insert
3-1
ARG*

1 **SECTION 1.** 301.48 (1) (e) 1. of the statutes, as created by 2005 Wisconsin Act
2 431, is amended to read:

*1WS
3-1
cmh*

3 301.48 (1) (e) 1. Section 948.02 (1) (am), (b), (c), or (d) or 948.025 (1) (a), (b), or
4 ~~(ag)~~ (c).

5 **SECTION 2.** 301.48 (1) (e) 2. d. of the statutes is created to read:

6 301.48 (1) (e) 2. d. The actor has sexual contact or sexual intercourse with a
7 person who has not attained the age of 13 years and the sexual contact or sexual
8 intercourse results in great bodily harm, as defined in s. 939.22 (14), to the person.

9 **SECTION 3.** 301.49 of the statutes is created to read:

10 **301.49 Vehicle registration plates for certain sex offenders. (1)**

11 **DEFINITIONS.** In this section:

12 (a) "Serious child sex offense" has the meaning given in s. 301.48 (1) (e).

13 (b) "Sex offense" means any of the following offenses, other than one that is a
14 serious child sex offense:

15 1. A sex offense, as defined in s. 301.45 (1d) (b).

16 2. A crime under federal law or the law of any state that is comparable to a crime
17 described in subd. 1.

18 **(2) WHO IS COVERED.** (a) A person who is subject to the global positioning system
19 tracking requirement under s. 301.48 (2) or (2m) is subject to the vehicle registration
20 plate requirement and prohibition under sub. (3) until the person is released from

1 the global positioning system tracking requirement under s. 301.48 (2) or (2m), until
2 his or her death, or until otherwise terminated under sub. (6) or (7).

3 (b) If a person is required to be registered as a sex offender under s. 301.45 due
4 to a commission of a serious child sex offense and par. (a) does not apply, he or she
5 is subject to the vehicle registration plate requirement and prohibition under sub.
6 (3) until he or she is no longer required to register as a sex offender under s. 301.45,
7 until his or her death, or until otherwise terminated under sub. (6) or (7).

8 (c) If a person is on supervised release under s. 980.08 (6m) and par. (a) does
9 not apply, he or she is subject to the vehicle registration plate requirement and
10 prohibition under sub. (3) until his or her death or until otherwise terminated under
11 sub. (7).

12 (d) If a person is on parole, or has been discharged, under ch. 975, by the
13 department of health and family services following a commitment that was based on
14 his or her commission of a serious child sex offense and par. (a) does not apply, he or
15 she is subject to the vehicle registration plate requirement and prohibition under
16 sub. (3) until his or her death or until otherwise terminated under sub. (7).

17 (e) If a person has been convicted under federal law or the law of any other state
18 of a crime that is comparable to a serious child sex offense or found not guilty of or
19 not responsible for such a crime by reason of mental disease or mental defect, the
20 person is subject to the vehicle registration plate requirement and prohibition under
21 sub. (3) for as long as he or she resides in this state, is employed or carrying on a
22 vocation, as defined in s. 301.45 (1d) (a), in this state, or is a student, as defined in
23 s. 301.45 (1d) (c), in this state or until that requirement and that prohibition are
24 otherwise terminated under sub. (6) or (7).

IN SECT 5-4 cmh

1 (f) If a person has committed a sex offense and par. (a), (b), (c), (d), or (e) does
2 not apply, the department may require the person to comply with sub. (3) as a
3 condition of the person's probation, extended supervision, or parole.

IN SECT 5-4 (ARG)

4 **(3) VEHICLE REGISTRATION PLATE REQUIREMENTS.** (a) A person covered under sub.
5 (2) shall apply, for each vehicle registered in his or her name, to the department of
6 transportation for special plates issued under s. 341.14 (6y).

7 (b) A person covered under sub. (2) may not operate a motor vehicle unless it
8 bears registration plates issued under s. 341.14 (6y).

9 **(4) PENALTIES.** (a) Whoever intentionally violates sub. (3) (a) is guilty of a Class
10 G felony.

11 (b) Whoever intentionally violates sub. (3) (b) is guilty of a Class H felony.

12 **(5) NOTIFICATION.** (a) The department shall notify a person under sub. (2) (a),
13 (b), (e), or (f) of his or her need to comply with the vehicle registration plate
14 requirement and prohibition under sub. (3).

15 (b) If the person is not already required to be notified under par. (a), the
16 department of health and family services shall notify the person under sub. (2) (c)
17 or (d) of his or her need to comply with the vehicle registration plate requirement and
18 prohibition under sub. (3).

19 (c) After notifying a person under par. (a) or (b) of the need to comply with this
20 section, the person who is providing the notification shall require the person who is
21 being notified to read and sign a form stating that he or she has been informed of the
22 requirements of this section.

23 (d) It is not a defense to liability under sub. (4) (a) or (b) that the person subject
24 to sub. (3) was not required to read and sign a form under par. (c), was not provided
25 with a form to read and sign under par. (c), or failed or refused to read or sign a form

1 under par. (c). It is not a defense to liability under sub. (4) (a) or (b) that the person
2 subject to sub. (3) did not receive notice under this subsection from the department
3 of health and family services or the department of corrections.

4 (6) OFFENDER'S PETITION TO TERMINATE SPECIAL VEHICLE PLATE REQUIREMENT. (a)
5 Subject to par. (b), a person who is subject to sub. (3) may file a petition requesting
6 that the requirement and the prohibition in sub. (3) be terminated for him or her.
7 A person shall file a petition requesting termination of the requirement and the
8 prohibition in sub. (3) with the circuit court for the county in which the person was
9 convicted or found not guilty or not responsible by reason of mental disease or defect.

10 (b) 1. A person may not file a petition requesting termination of the
11 requirement and the prohibition in sub. (3) if he or she has been convicted of a crime
12 that was committed while he or she was subject to sub. (3).

13 2. A person may not file a petition requesting termination of the requirement
14 and the prohibition in sub. (3) earlier than 20 years after the date on which the person
15 first became subject to sub. (3). If a person files a petition requesting termination
16 of the requirement and the prohibition in sub. (3) at any time earlier than 20 years
17 after the date on which the person first became subject to sub. (3), the court shall
18 deny the petition without a hearing.

19 3. This subsection does not apply to a person described in sub. (2) (c) or in s.
20 301.48 (2) (b).

21 (c) Upon receiving a petition requesting termination of the requirement and the
22 prohibition in sub. (3), the court shall send a copy of the petition to the district
23 attorney responsible for prosecuting the offense that was the basis for sub. (3)
24 applying to the petitioner. Upon receiving the copy of the petition, the district
25 attorney shall conduct a criminal history record search to determine whether the

1 petitioner has been convicted of a criminal offense that was committed while he or
2 she was subject to sub. (3). No later than 30 days after the date on which he or she
3 receives the copy of the petition, the district attorney shall report the results of the
4 criminal history record search to the court and may provide a written response to the
5 petition.

6 (d) After reviewing a report submitted under par. (c) concerning the results of
7 a criminal history record search, the court shall do whichever of the following is
8 applicable:

9 1. If the report indicates that the petitioner has been convicted of a criminal
10 offense that was committed while he or she was subject to sub. (3), the court shall
11 deny the petition without a hearing.

12 2. If the report indicates that the petitioner has not been convicted of a criminal
13 offense that was committed while he or she was subject to sub. (3), the court shall
14 order the petitioner to be examined under par. (e), shall notify the department that
15 it may submit a report under par. (f) and shall schedule a hearing on the petition to
16 be conducted as provided under par. (g).

17 (e) A petitioner who is entitled to a hearing under par. (d) 2. shall be examined
18 by a person who is either a physician or a psychologist licensed under ch. 455 and who
19 is approved by the court. The physician or psychologist who conducts an examination
20 under this paragraph shall prepare a report of his or her examination that includes
21 his or her opinion of whether the petitioner is a danger to the public. The physician
22 or psychologist shall file the report of his or her examination with the court within
23 60 days after completing the examination, and the court shall provide copies of the
24 report to the petitioner and the district attorney. The contents of the report shall be

1 confidential until the physician or psychologist testifies at a hearing under par. (g).

2 The petitioner shall pay the cost of an examination required under this paragraph.

3 (f) After it receives notification from the court under par. (d) 2., the department
4 may prepare and submit to the court a report concerning the petitioner. If the
5 department prepares and submits a report under this paragraph, the report shall
6 include information concerning the petitioner's conduct while subject to sub. (3) and
7 an opinion as to whether subjecting the petitioner to sub. (3) is still necessary to
8 protect the public. When a report prepared under this paragraph has been received
9 by the court, the court shall, before the hearing under par. (g), disclose the contents
10 of the report to the attorney for the petitioner and to the district attorney. When the
11 petitioner is not represented by an attorney, the contents shall be disclosed to the
12 petitioner.

13 (g) A hearing on a petition requesting termination of the requirement and the
14 prohibition in sub. (3) may not be conducted until the petitioner has been examined
15 and a report of the examination has been filed as provided under par. (e). At the
16 hearing, the court shall take evidence it considers relevant to determining whether
17 sub. (3) should continue to apply because the petitioner is a danger to the public. The
18 petitioner and the district attorney may offer evidence relevant to the issue of the
19 petitioner's dangerousness and the continued need for sub. (3) to apply.

20 (h) The court may grant a petition requesting termination of the requirement
21 and the prohibition in sub. (3) if it determines after a hearing under par. (g) that
22 subjecting the petitioner is no longer necessary to protect the public.

23 (i) If a petition filed under this subsection is denied after a hearing under par.
24 (g), the person may not file a subsequent petition under this subsection until at least
25 5 years have elapsed since the most recent petition was denied.

1 (7) DEPARTMENT'S PETITION TO TERMINATE SPECIAL VEHICLE PLATE REQUIREMENT.

2 (a) The department may file a petition requesting that the requirement and the
3 prohibition in sub. (3) be terminated with respect to a person if the person is
4 permanently physically incapacitated. The petition shall include affidavits from 2
5 physicians that explain the nature of the person's permanent physical
6 incapacitation.

7 (b) 1. The department shall file a petition under par. (a) with the circuit court
8 for the county in which the person was convicted or found not guilty or not
9 responsible by reason of mental disease or defect or, in the case of a person described
10 in sub. (2) (c) or s. 301.48 (2) (b), the circuit court for the county in which the person
11 was found to be a sexually violent person.

12 2. The department shall send a copy of a petition filed under subd. 1. to the
13 district attorney responsible for prosecuting the offense that was the basis for sub.
14 (3) applying to the person or, in the case of a person described in sub. (2) (c) or s. 301.48
15 (2) (b), the agency that filed the petition under s. 980.02.

16 (c) Upon its own motion or upon the motion of the party to whom the petition
17 was sent under par. (b) 2., the court may order that the person to whom the petition
18 relates be examined by a physician who is approved by the court. The physician who
19 conducts an examination under this paragraph shall prepare a report of his or her
20 examination that includes his or her opinion of whether the person is permanently
21 physically incapacitated. The physician shall file the report of his or her examination
22 with the court within 60 days after completing the examination, and the court shall
23 provide copies of the report to the department and the party to whom the petition was
24 sent under par. (b) 2. The contents of the report shall be confidential until the

SECTION 3

1 physician testifies at a hearing under par. (d). The department shall pay the cost of
2 an examination required under this paragraph.

3 (d) The court shall conduct a hearing on a petition filed under par. (b) 1., but
4 if the court has ordered a physical examination under par. (c), the hearing may not
5 occur until after the examination is complete and a report of the examination has
6 been filed as provided under par. (c). At the hearing, the court shall take evidence
7 it considers relevant to determining whether the person to whom the petition relates
8 is permanently physically incapacitated so that he or she is not a danger to the
9 public. The department and the party to whom the petition was sent under par. (b)
10 2. may offer relevant evidence regarding that issue.

11 (e) The court may grant a petition filed under par. (b) 1. if it determines after
12 a hearing under par. (d) that the person to whom the petition relates is permanently
13 physically incapacitated so that he or she is not a danger to the public.

14 **SECTION 4.** 341.14 (6y) of the statutes is created to read:

15 341.14 (6y) Upon application by a person who is covered under s. 301.49 (2) to
16 obtain a special registration plate that identifies the person as a sex offender. The
17 special plate shall be chartreuse.

18 **SECTION 5.** 341.16 (1) (a) of the statutes is amended to read:

19 341.16 (1) (a) Whenever a current registration plate is lost or destroyed, or as
20 provided in par. (c), the owner of the vehicle to which the plate was attached shall
21 immediately apply to the department for replacement. Except as provided in par.
22 pars. (b) and (c) and sub. (2m), upon satisfactory proof of the loss or destruction of the
23 plate and upon payment of a fee of \$2 for each plate, the department shall issue a
24 replacement.

25 **SECTION 6.** 341.16 (1) (c) of the statutes is created to read:

insert
11-1

1 341.16 (1) (c) A person who is required under s. 301.49 (2) to obtain special
2 registration plates shall immediately apply for the department to issue a
3 registration plate under s. 341.14 (6y). Upon receipt of the application and payment
4 of a fee of \$10, the department may issue a plate under s. 341.14 (6y). Upon receipt
5 of the replacement registration plate, the applicant shall destroy all plates replaced.

6 **SECTION 7.** 341.16 (4) of the statutes is amended to read:

7 341.16 (4) Any person issued replacement plates who fails to destroy the
8 original plates as required by sub. (1) (c), (2), or (3) may be required to forfeit not more
9 than \$200.

10 **SECTION 8.** 939.616 (1g) of the statutes is created to read:

11 939.616 (1g) If a person is convicted of a violation of s. 948.02 (1) (am) or
12 948.025 (1) (a), notwithstanding s. 973.014 (1g) (a) 1. and 2., the court may not make
13 an extended supervision eligibility date determination on a date that will occur
14 before the person has served a 25-year term of confinement in prison.

15 **SECTION 9.** 939.617 (1) of the statutes, as created by 2005 Wisconsin Act 430,
16 is renumbered 939.616 (1r) and amended to read:

17 939.616 (1r) If a person is convicted of a violation of s. 948.02 (1) (b) or (c) or
18 948.025 (1) ~~(a)~~ (b), the court shall impose a bifurcated sentence under s. 973.01. The
19 term of confinement in prison portion of the bifurcated sentence shall be at least 25
20 years. Otherwise the penalties for the crime apply, subject to any applicable penalty
21 enhancement.

22 **SECTION 10.** 939.617 (2) of the statutes, as created by 2005 Wisconsin Act 430,
23 is renumbered 939.616 (2) and amended to read:

24 939.616 (2) If a person is convicted of a violation of s. 948.02 (1) (d) or 948.025
25 (1) ~~(ag)~~ (c), the court shall impose a bifurcated sentence under s. 973.01. The term

1 of confinement in prison portion of the bifurcated sentence shall be at least 5 years.
2 Otherwise the penalties for the crime apply, subject to any applicable penalty
3 enhancement.

4 **SECTION 11.** 939.617 (3) of the statutes, as created by 2005 Wisconsin Act 430,
5 is renumbered 939.616 (3).

6 **SECTION 12.** 948.02 (1) of the statutes is repealed and recreated to read:

7 948.02 (1) FIRST DEGREE SEXUAL ASSAULT. (a) In this subsection, “sexual
8 intercourse” means vulvar penetration as well as cunnilingus, fellatio, or anal
9 intercourse between persons or any intrusion of any inanimate object into the genital
10 or anal opening either by the defendant or upon the defendant’s instruction. The
11 emission of semen is not required.

12 (am) Whoever has sexual contact or sexual intercourse with a person who has
13 not attained the age of 13 years is guilty of a Class A felony if the sexual contact or
14 sexual intercourse results in great bodily harm to the person.

15 (b) Whoever has sexual intercourse with a person who has not attained the age
16 of 12 years is guilty of a Class B felony.

17 (c) Whoever has sexual intercourse with a person who has not attained the age
18 of 16 years by use or threat of force or violence is guilty of a Class B felony.

19 (d) Whoever has sexual contact with a person who has not attained the age of
20 16 years by use or threat of force or violence is guilty of a Class B felony if the actor
21 is at least 18 years of age when the sexual contact occurs.

22 (e) Whoever has sexual contact with a person who has not attained the age of
23 13 years is guilty of a Class B felony.

24 **SECTION 13.** 948.025 (1) of the statutes is repealed and recreated to read:

1 948.025 (1) (a) A Class A felony if at least 3 of the violations were violations of
2 s. 948.02 (1) (am).

3 (b) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
4 (am), (b), or (c) but fewer than 3 of the violations were violations of s. 948.02 (1) (am).

5 (c) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
6 (am), (b), (c), or (d) but fewer than 3 of the violations were violations of s. 948.02 (1)
7 (am), (b), or (c).

8 (d) A Class B felony if at least 3 of the violations were violations of s. 948.02 (1)
9 (am), (b), (c), (d), or (e) but fewer than 3 of the violations were violations of s. 948.02
10 (am), (b), (c), or (d).

11 **SECTION 14.** 948.025 (2) of the statutes is repealed and recreated to read:

12 948.025 (2) (a) If an action under sub. (1) (a) is tried to a jury, in order to find
13 the defendant guilty the members of the jury must unanimously agree that at least
14 3 violations of s. 948.02 (1) (am) occurred within the specified period of time but need
15 not agree on which acts constitute the requisite number.

16 (b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant
17 guilty the members of the jury must unanimously agree that at least 3 violations of
18 s. 948.02 (1) (am), (b), or (c) occurred within the specified period of time but need not
19 agree on which acts constitute the requisite number and need not agree on whether
20 a particular violation was a violation of s. 948.02 (1) (am), (b), or (c).

21 (c) If an action under sub. (1) (c) is tried to a jury, in order to find the defendant
22 guilty the members of the jury must unanimously agree that at least 3 violations of
23 s. 948.02 (1) (am), (b), (c), or (d) occurred within the specified period of time but need
24 not agree on which acts constitute the requisite number and need not agree on
25 whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), or (d).

1 (d) If an action under sub. (1) (d) is tried to a jury, in order to find the defendant
2 guilty the members of the jury must unanimously agree that at least 3 violations of
3 s. 948.02 (1) (am), (b), (c), (d), or (e) occurred within the specified period of time but
4 need not agree on which acts constitute the requisite number and need not agree on
5 whether a particular violation was a violation of s. 948.02 (1) (am), (b), (c), (d), or (e).

6 **SECTION 15. Effective dates.** This act takes effect on the day after publication,
7 except as follows:

8 (1) The treatment of sections ~~301.49~~ of the statutes takes effect on the first day
9 of the 6th month beginning after publication.

10 (2) The treatment of section 301.48 (1) (e) 1. and 2. d. of the statutes takes effect
11 on July 1, 2007. ✓

12 (END)

D-Note

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0702/P2ins
ARG:.....

INSERT 3-1:

SECTION 1. 25.40 (1) (a) 3. of the statutes is amended to read:

25.40 (1) (a) 3. Revenues collected under ss. 341.09 (2) (d), (2m) (a) 1., (4), and (7), 341.14 (2), (2m), (6) (d), (6m) (a), (6r) (b) 2., (6w), and (8), 341.145 (3), 341.16 (1) (a) ~~and (b)~~ to (c), (2), and (2m), 341.17 (8), 341.19 (1) (a), 341.25, 341.255 (1), (2) (a), (b), and (c), (4), and (5), 341.26 (1), (2), (2m) (am) and (b), (3), (3m), (4), (5), and (7), 341.264 (1), 341.265 (1), 341.266 (2) (b) and (3), 341.268 (2) (b) and (3), 341.30 (3), 341.305 (3), 341.308 (3), 341.36 (1) and (1m), 341.51 (2), and 342.14, except s. 342.14 (1r), that are pledged to any fund created under s. 84.59 (2).

History: 1971 c. 125, 211; 1973 c. 90, 333; 1975 c. 39; 1975 c. 163 s. 16; 1975 c. 199; 1977 c. 29, 274, 418, 447; 1979 c. 34; 1979 c. 361 s. 113; 1981 c. 20; 1981 c. 347 s. 80 (2), (4); 1983 a. 27, 538; 1985 a. 16 s. 15; 1985 a. 29 ss. 638p, 3202 (51); 1985 a. 120 ss. 66, 3202 (56); 1985 a. 332; 1987 a. 3, 27, 110, 399, 403; 1989 a. 31, 102, 105, 359; 1991 a. 39, 104, 189, 269, 309, 315; 1993 a. 16, 123, 205, 253, 415, 437, 491; 1995 a. 27, 113, 201, 269, 280, 445; 1997 a. 27, 35, 41, 135, 237, 255; 1999 a. 9, 32, 92, 167; 2001 a. 16; 2003 a. 33, 139; 2005 a. 25, 45, 85, 179, 199, 260, 319; s. 13.93 (1) (b).

SECTION 2. 84.59 (2) (b) of the statutes is amended to read:

84.59 (2) (b) The department may, under s. 18.562, deposit in a separate and distinct special fund outside the state treasury, in an account maintained by a trustee, revenues derived under ss. 341.09 (2) (d), (2m) (a) 1., (4), and (7), 341.14 (2), (2m), (6) (d), (6m) (a), (6r) (b) 2., (6w), and (8), 341.145 (3), 341.16 (1) (a) ~~and (b)~~ to (c), (2), and (2m), 341.17 (8), 341.19 (1) (a), 341.25, 341.255 (1), (2) (a), (b), and (c), (4), and (5), 341.26 (1), (2), (2m) (am) and (b), (3), (3m), (4), (5), and (7), 341.264 (1), 341.265 (1), 341.266 (2) (b) and (3), 341.268 (2) (b) and (3), 341.30 (3), 341.305 (3), 341.308 (3), 341.36 (1) and (1m), 341.51 (2), and 342.14, except s. 342.14 (1r). The revenues deposited are the trustee's revenues in accordance with the agreement between this state and the trustee or in accordance with the resolution pledging the revenues to the repayment of revenue obligations issued under this section. Revenue obligations issued for the purposes specified in sub. (1) and for the repayment of

which revenues are deposited under this paragraph are special fund obligations, as defined in s. 18.52 (7), issued for special fund programs, as defined in s. 18.52 (8).

History: 1983 a. 27, 212; 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 113; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33; 2005 a. 25.

INSERT 5-4:

(3) VEHICLE REGISTRATION PLATE REQUIREMENTS. (a) A person covered under sub. (2) who applies to the department of transportation for registration of a motor vehicle under ch. 341 shall identify himself or herself in the application as a person to whom special registration plates shall be issued under s. 341.14 (6y).

(b) If a person registered in his or her name any motor vehicle under ch. 341 prior to becoming covered under sub. (2), the person shall, immediately after becoming covered under sub. (2), apply to the department of transportation for replacement registration plates under s. 341.16 (1) (c) for each such vehicle, identifying himself or herself in the application for replacement registration plates as a person to whom special registration plates shall be issued under s. 341.14 (6y).

(c) A person covered under sub. (2) may not operate on a highway, as defined in s. 340.01 (22), a motor vehicle required to be registered under ch. 341 unless it displays registration plates issued under s. 341.14 (6y).

INSERT 10-14:

~~SECTION 3.~~ 341.01 (2) (c) of the statutes is created to read:

341.01 (2) (c) "Sex offender" means a person who is covered under s. 301.49 (2).

~~SECTION 4.~~ 341.08 (1m) of the statutes is amended to read:

341.08 (1m) The forms for application for original registration and for renewal of registration under sub. (1) shall include the information required under s. 85.103 (2) and, the applicant's birth date, and whether the applicant is a sex offender. ✓

History: 1971 c. 164; 1973 c. 218; 1975 c. 94; 1977 c. 29 ss. 1414, 1654 (7) (a); 1979 c. 34; 1981 c. 165; 1983 a. 180; 1987 a. 349; 1991 a. 13, 269, 316; 1995 a. 255, 338; 1997 a. 27; 1999 a. 88, 90, 110; 2003 a. 201.

INSERT 10-15:

341.14 (6y) (a) Upon application by a person who is a sex offender, the department shall issue and deliver to the person plates of a special design, in lieu of the plates that ordinarily would be issued for the vehicle, and shall renew the plates. ✓
The plates shall have a chartreuse-colored background. ✓ The department shall design the plates so as to readily apprise law enforcement officers of the fact that the vehicle is owned by a sex offender. ✓ No charge in addition to the registration fee shall be made for the issuance or renewal of such plates. ✓ If at any time the owner of the vehicle is no longer a sex offender, the owner may dispose of these special plates in a manner prescribed by the department and shall obtain replacement plates for the vehicle. ✓

SECTION 5. 341.145 (1) (g) of the statutes is created to read:

341.145 (1) (g) A registration plate of the same color and design as provided in s. 341.14 (6y) for a vehicle registered by a sex offender, which displays a registration number composed of letters or numbers, or both, not exceeding 6 positions and not less than one position, requested by the applicant. ✓

SECTION 6. 341.145 (1g) (f) of the statutes is created to read:

341.145 (1g) (f) The department may issue personalized registration plates under sub. (1) (g) to a person who is required to obtain special plates issued under s. 341.14 (6y). ✓

INSERT 11-1:

INS 11-1
341.16 (1) (c) Upon receipt of an application by a sex offender required under s. 301.49 (3) (b) to be issued special registration plates under s. 341.14 (6y), along with a fee of \$10 for each plate, the department shall issue replacement plates under s. 341.14 (6y). Upon receipt of these replacement registration plates, the applicant shall remove and destroy all registration plates replaced.

INSERT 14-5:

SECTION 7. Nonstatutory provisions.

(1) In this section, sex offender has the meaning given in section 341.01 (2) (c) of the statutes, as created by this act.

(2) Not later than 60 days after the effective date of this subsection, a person who, as of the effective date of this subsection, is a sex offender and who has any motor vehicle registered in his or her name under chapter 341 of the statutes shall apply to the department of transportation for replacement registration plates for each such vehicle, identifying himself or herself in the application as a person to whom special registration plates shall be issued under section 341.14 (6y) of the statutes, as created by this act. Upon receipt of such an application, along with a fee of \$10 for each plate, the department of transportation shall issue to the applicant replacement registration plates under section 341.14 (6y) of the statutes, as created by this act. Upon receipt of these replacement registration plates, the applicant shall remove and destroy all registration plates replaced.

INSERT 14-5:

25.40 (1) (a) 3., 84.59 (2) (b), 301.49, 341.01 (2) (c), 341.08 (1m), 341.14 (6y), 341.145 (1) (g) and (1g) (f), and 341.16 (1) (c) and (4) of the statutes and Section 18 of this act

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0702/P1dn

CMH:lmkjf

ARB

P2 dn

(date)
December 19, 2006

Jonna:

Please review the effective date provision. I made the act effective on the first day of the sixth month beginning after publication to give DOT time to create the license plates and the persons subject to the license plate requirement and prohibition time to acquire them. Is that time frame okay?

This bill has a retroactive application. It applies to all persons registered as sex offenders if a serious child sex offense is the basis for the registration requirement and to all persons on supervised release. This is different than the GPS tracking requirement in s. 301.48, which, except for persons covered under s. 301.48 (2) (c), the event that triggers the GPS requirement has to occur on or after July 1, 2007. I am noting this only because I want to make sure that this is what you intend. The retroactive application may increase the fiscal estimate since the requirement will apply to more people and DOC and DHFS will have to notify more people.

Note that I reconciled Acts 430, 431, and 437 in this bill. I did this to clarify definitions and cross-references. Otherwise this bill would be a great deal longer and more confusing right now; also, once those Acts were reconciled the language incorporating the current statutes would be superfluous. OK? If those acts are reconciled before you introduce this bill, then I can redraft this bill to eliminate the reconciliation provisions. If this bill is already introduced, the reconciliation provisions will not have any effect.

Please review the penalty provisions. You asked for a maximum imprisonment sentence of 10 years. So I made the violations Class G and Class H felonies. Please be aware that these are bifurcated sentences so that the 10 year maximum includes a term of confinement and a term of extended supervision.

I made this draft a preliminary draft because I anticipate that you may want changes. It will have to be redrafted before it can be introduced.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov

Please note that this bill has a person's status as a person covered under s. 301.49(2) readily available to law enforcement through the TIME system. Is that the manner in which you prefer an officer to know upon stopping a person that the person is violating s. 301.49(2)(c)? Or would you prefer the person to have a distinctive driver's license as well?

NOTE
insert
cmfr

INS
DN

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0702/P2ins
CMH&ARG:lmk:jf

1 Insert 3-1 cmh

2 **SECTION 1.** 165.8285 (1m) of the statutes is created to read:

3 165.8285 **(1m)** For the purpose of determining if a person is violating s. 301.49
4 (3), the department of justice shall, through the transaction information for
5 management of enforcement system, provide local law enforcement agencies with
6 access to the information provided under s. 301.49 (2m) by the department of
7 corrections under s. 301.49 (2m) (a) or by the department of health and family
8 services under s. 301.49 (2m) (b).

9
10 Insert 5-4 cmh

11 **(2m)** (a) The department shall provide to the department of justice information
12 sufficient to identify the persons who are covered under sub. (2) (a), (b), (e), or (f) for
13 the purpose of s. 165.8285 (1m).

14 (b) Unless par. (a) requires the department to provide to the department of
15 justice information sufficient to identify the persons who are covered under sub. (2)
16 (c) or (d), the department of health and family shall provide to the department of
17 justice information sufficient to identify the persons who are covered under sub. (2)
18 (c) or (d) for the purpose of s. 165.8285 (1m).

19
20 D-note insert cmh

21 A Please note that a court could find that these requirements violate the ex post
22 facto clause if the requirements are seen to be punitive in nature and thus retroactive
23 punishment--versus a nonpunitive regulatory scheme enacted for public protection.

emdash

*either in purpose
or effect*

*single
face*

1 See ^ISmith v. Doe, 538 U.S. 84, 2003. I did not find examples of other jurisdictions
2 imposing such requirements so I do not know how other courts have interpreted
3 similar provisions. ✓

4 Should there be exceptions? What if, for instance, a person earns his or her
5 livelihood driving a company vehicle? Or what if there are extenuating
6 circumstances—^{emdash}a person drives another person's car to get that person to the
7 hospital or because that person is not able to drive for other reasons (such as
8 intoxication for instance)?

*(in this sense ↑
this bill may be seen
as punitive because
it may limit persons covered
from changing jobs)*

*Maybe the exception
could require that
the person
notify DOC?*

*Single
Space*

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0702/P2dn

ARG:.....

*INS
DN*
Jonna:

Please review the attached draft carefully to ensure that it is consistent with your intent. I have revised some of the provisions from the 2005 draft. ✓

The attached draft allows these chartreuse "sex offender" license plates to be personalized. Is this okay? Also, the attached draft does not require these sex offender license plates to be redesigned every ten years, as most license plates are. ✓ See s. 341.135. Is this okay? I believe that created s. 301.49 (3) (b) in the 2005 draft was overbroad and have revised that provision. ✓ Is the provision (now created s. 301.49 (3) (c)) consistent with your intent? ✓ Also, I have revised the provision relating to how this bill is phased-in to apply to different vehicle registration circumstances of sex offenders. See created s. 301.49 (3) (a) and (b) and bill section (18) [nonstatutory provision]. Is this okay? ✓

Do you want the notice required under created s. 301.49 (5) in the attached draft to also be sent to DOT? ✓

The attached draft will have a financial impact upon DOT. ✓ Do you want to provide for an additional fee for the sex offender license plates or to increase DOT's DMV appropriation to make up this cost or both? ✓

Please let me know if you would like any changes made to the attached draft or if you have any questions. ✓

*Lps. can you make sure
this #
matches
the A.R.
created
by pg 4
of ARG
ins.?*

Aaron R. Gary
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